Primaris was asked by Governor Jay Nixon's office what sorts of legislative or regulatory changes might be considered desirable in Missouri law as a result of changes to HIPAA in the American Recovery and Reinvestment Act (ARRA).

The question was put to our esteemed colleagues at Polsinelli/Shughart who have been helping with the HISP work. This email was received from Jody Joiner on 3-9-09.

These thoughts have been shared with the Governor's office. They are presented to the HISPC Steering Committee for information and discussion…

After reviewing the relevant provisions of the ARRA, we have come up with two primary suggestions for potential legislative change. Given the changes to HIPAA under ARRA, we think the best strategy, at least for now until we have more information about how some of the new provisions will be interpreted, is to address issues that are not specifically addressed in ARRA/HIPAA or state law.

1. We suggest a bill specifically addressing electronic transmission of health information. Although ARRA addressess access to electronic health records by patients as a general matter, it does not include any details regarding use and disclosure of EHR from a practical perspective. We would suggest a bill relating to EHR that (1) amends certain existing laws (e.g. 191.227 - access to medical records) and (2) adds new statutes where necessary. The bill should address at a minimum the following issues:

a. Electronic access by patients
b. Electronic transmission between providers
c. Permissible methods of wireless access by both providers and patients (e.g., WIFI laptop access, PDA/smart phone access, etc.)

Any bill outlining such transmission/access to EHR should include, as a practical matter, various methods/technologies that may be used for electronic transmission/access and how the costs (e.g., fee for the disk if one is used and mailing charges, if applicable) will be handled.

2. We recommend a bill addressing issues related to minors. Current HIPAA provisions allow state laws to address most use and disclosure issues regarding minors. However, Missouri's current laws do not specifically address access to medical records by minors, although it is usually assumed that if minor patients are authorized to consent to their own treatment, they are authorized to consent to the release of their medical records related to that treatment.

In addition, Missouri law makes it difficult for providers to care for minor patients, particularly in situations in which minors are permitted to consent to their own treatment. For example, under current Missouri law, minors are authorized, without parental consent or knowledge, to consent to treatment or procedures in the case of (1) pregnancy (but not abortions); (2) venereal disease; and (3) drug or substance abuse. Two primary concerns stem from this provision. First, the categories are not clear enough. For example, the statute does not make it clear whether a minor may consent to treatment for birth control or for other sexually transmitted diseases besides venereal disease. Second, the statute does not address how payment for services rendered is affected by the authorization to consent to treatment. For example, a minor patient that consents to treatment for venereal disease likely does not want a parent to be informed of such treatment, but unless the minor pays out of pocket for the treatment, it will likely be run through a parent's health insurance. As a result the parent may receive an explanation of benefits from the insurance company indicating that the minor was treated for venereal disease. The issue of consent/payment creates a complicated interplay that needs to be acknowledged/addressed under state law.

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